

#### § 3001.34

#### 39 CFR Ch. III (7–1–04 Edition)

deposition is offered in evidence by a participant, any other participant may require him/her to introduce all of it which is relevant to the part introduced, and any participant may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the participant or participants on whose application the deposition was taken.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993; 58 FR 38976, July 21, 1993]

#### § 3001.34 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of a recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service, the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed in the form and manner and served as required by §§ 3001.9 to 3001.12.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4328, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

#### § 3001.35 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

[38 FR 4329, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

#### § 3001.36 Oral argument before the presiding or other designated officer.

In any case in which the presiding officer is to issue an initial or recommended decision, or another designated officer of the Commission is to issue a recommended decision, such officer may permit the presentation of

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oral argument when, in his/her opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants hearing such argument. Such officer shall determine the time and place for oral argument. He may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993]

### § 3001.37 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any participant or on its own initiative, may order oral argument when, in the Commission's discretion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and public interest warrants such argument.

(b) *How requested.* Any participant in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion pursuant to § 3001.21. In a proceeding before the Commission on exceptions to an intermediate decision, such motion shall be filed no later than the date for the filing of briefs on exceptions. Motions requesting oral argument may be included in briefs or briefs on exceptions or in a separate document.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the participants of the time and place set for argument, the amount of time allowed each participant, and the issue or issues on which oral argument is to be heard. Unless otherwise ordered by the Commission, oral argument shall be limited to matters properly raised on the record and in the briefs before the Commission.

(d) *Use of documents at oral argument.* Charts, graphs, maps, tables and other

written material may be presented to the Commission at oral argument only if limited to facts in the record of the case being argued and if copies of such documents are filed with the Secretary and served on all parties at least 7 days in advance of the argument. Enlargements of such charts, graphs, maps and tables may be used at the argument provided copies are filed and served as required by this paragraph.

### § 3001.38 Omission of intermediate decisions.

(a) *Basis of omission.* In any proceeding noticed pursuant to § 3001.17, the Commission, on the motion of any participant or on its own initiative, may direct the certification of the record to the Commission and omit any intermediate decision upon a finding on the record that due and timely execution of its functions imperatively and unavoidably so requires. In proceedings in which all participants concur in a request by any participant that any intermediate decision be omitted, the Commission shall direct the certification of the record to the Commission and forthwith render a final decision unless the Commission denies such request within 10 days next following its filing or referral by the presiding officer.

(b) *Requests for omission.* Requests for omission of the intermediate decision in any proceeding shall be made by motion pursuant to § 3001.21 or made orally on the record before the presiding officer who shall promptly refer the same to the Commission. Such requests shall specify (1) the concurrence of other parties and (2) whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived. Failure of any party to object to such request shall constitute a waiver of any objections.

### § 3001.39 Intermediate decisions.

(a) *Initial decision by presiding officer.* In any proceedings in which a Commissioner or hearing officer has presided at the reception of evidence, such presiding officer, as soon as practicable after the conclusion of the hearing and the filing of briefs, shall certify and file with the Secretary, a copy of the record of the hearing and his/her initial